

1 ROBERT P. TAYLOR (SBN 46046)
Email: rtaylor@mintz.com
2 BRYAN J. SINCLAIR (SBN 205885)
Email: bsinclair@mintz.com
3 JEFFREY M. RATINOFF (SBN 197241)
Email: jratinoff@mintz.com
4 MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO, PC
5 1400 Page Mill Road
Palo Alto, California 94304-1124
6 Telephone: (650) 251-7700
Facsimile: (650) 251-7739

7
8 Attorneys for Defendant,
SOFTSCAPE, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,
16 and DOES 1-10, inclusive,

17 Defendants.

Case No. CV 08-1376 CW (BZ)

**DECLARATION OF BRYAN J.
SINCLAIR IN SUPPORT OF FILING OF
PORTIONS OF JOINT CMC
STATEMENT UNDER SEAL**

1 I, Bryan J. Sinclair, declare:

2 1. I am an attorney licensed to practice law before all courts in the State of California,
3 and the United States District Court for the Northern District of California. I am a member of
4 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin") in its Palo Alto, CA office
5 and I, along with other attorneys at Mintz Levin, and Ronald M. Davids, are attorneys of record for
6 Defendant Softscape, Inc. (hereinafter "Softscape"). I submit this declaration in support of
7 Softscape's Request to File Portions of the Joint CMC Statement.

8 2. At the Case Management Conference before the Court on Tuesday, June 17, 2008,
9 the Court and the parties discussed the question of whether any portions of the Joint CMC
10 Statement should be subject to a request for filing under seal.

11 3. On Thursday, June 19, 2008, I notified the clerk of this Court that the Parties were
12 attempting to resolve their confidentiality and sealing issues without court involvement.

13 4. As part of my efforts to resolve the confidentiality/sealing issues raised by the Joint
14 CMC Statement and discussed with the Court, I forwarded a revised (redlined) Joint CMC
15 Statement to counsel for SuccessFactors which sought to delete one sentence and several words
16 from a second sentence, thus obviating the need for Softscape to make any request to the Court to
17 accept any portion of the Joint CMC Statement under seal. Counsel for SuccessFactors refused to
18 remove the sentence and words from a second sentence and resubmit a revised Joint CMC
19 Statement without any necessity for sealing.

20 5. The fact section of the Joint CMC Statement includes information from the
21 deposition testimony of Dave Watkins', Softscape's CEO, that has been designated under the terms
22 of the Protective Order. Specifically, Softscape believes that the following narrowly tailored
23 portions of the Joint CMC Statement should remain under seal:

- 24 • Page 3, Line 14 (the text between the words "used" and "company");
- 25 • Page 3, Line 15 (the text between the closed parentheses and "where");
- 26 • Page 4, Line 6 (beginning with the sentence following the word
27 "Presentation") through line 8.

28 These are the only portions of the Joint Case Management Statement Softscape requests to be filed

1 under seal.

2 6. Softscape designates the information underlying SuccessFactor's characterization of
 3 Mr. Watkins' testimony on Page 3 of the Joint CMC Statement as "Highly Confidential - Attorneys
 4 Eyes Only" under the terms of the Protective Order as it refers to private financial information of a
 5 third party entity that is not otherwise available, and would not be revealed, outside the third party
 6 entity. Moreover, the disclosure of the information, as characterized by SuccessFactors, could
 7 result in injury to the third party. At a minimum, the information is "Confidential" under the terms
 8 of the Protective Order as it is the type of information that the third party would not normally reveal
 9 outside of the entity except in confidence or unless steps were undertaken to maintain the
 10 confidentiality of such information.

11 7. Softscape designates the information underlying SuccessFactor's characterization of
 12 Mr. Watkins' testimony on Page 4 of the Joint CMC Statement as "Highly Confidential - Outside
 13 Attorneys Eyes Only" under the terms of the Protective Order as it refers to extremely sensitive
 14 confidential competitive business information whose disclosure to another party or non-party could
 15 create a substantial risk of serious injury that can be avoided by keeping the information
 16 confidential.

17 8. In connection with the filing of this Declaration and pursuant to Local Rule 79-5,
 18 Softscape will lodge the proposed redacted version of the Joint CMC Statement and a narrowly
 19 tailored proposed sealing order. The Court has previously received the unredacted version of the
 20 Joint CMC Statement from counsel for SuccessFactors. Should the Court require any further
 21 information regarding the need to keep the identified confidential information underlying
 22 SuccssFactors' statements under seal, Softscape is prepared to provide additional information, *in*
 23 *camera*, as the Court requires.

24 I declare under penalty of perjury, under the laws of the State of California that the foregoing is
 25 true and correct, and that this declaration was executed in Palo Alto, California.

26 Dated: June 24, 2008

/s/ Bryan J. Sinclair

BRYAN J. SINCLAIR

28 4365162v.2

1 ROBERT P. TAYLOR (SBN 46046)
Email: rptaylor@mintz.com
2 BRYAN J. SINCLAIR (SBN 205885)
Email: bsinclair@mintz.com
3 JEFFREY M. RATINOFF (SBN 197241)
Email: jratinoff@mintz.com
4 MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO, PC
5 1400 Page Mill Road
Palo Alto, California 94304-1124
6 Telephone: (650) 251-7700
Facsimile: (650) 251-7739
7

8 Attorneys for Defendant,
SOFTSCAPE, INC.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 SUCCESSFACTORS, INC, a Delaware
corporation,

14 Plaintiff,

15 vs.

16 SOFTSCAPE, INC., a Delaware corporation,
17 and DOES 1-10, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. CV 08-1376 CW (BZ)

CERTIFICATE OF SERVICE

Judge: Honorable Claudia Wilken

Complaint filed: March 11, 2008
Trial Date: None set

CERTIFICATE OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in the County of Santa Clara, State of California, at Mintz Levin Cohn Ferris Glovsky and Popeo, PC, 1400 Page Mill Road, Palo Alto, California 94304-1124. On June 24, 2008, I served the following documents:

- **DECLARATION OF BRYAN J. SINCLAIR IN SUPPORT OF FILING OF PORTIONS OF JOINT CMC STATEMENT UNDER SEAL**
- **[PROPOSED] ORDER SEALING PORTIONS OF CMC STATEMENT**
- **JOINT CASE MANAGEMENT STATEMENT**

Manual Notice List and CERTIFICATE OF SERVICE VIA U.S. MAIL:

I am readily familiar with Mintz Levin's practice for collecting, processing and mailing correspondence and pleadings. Such correspondence and pleadings are deposited on the same day with the United States Postal Service in the ordinary course of business. I therefore had copies of the documents listed above placed in a separate envelope for each addressee named hereafter, addressed to each such addressee, respectively, as follows:

Attorneys for Plaintiff

Candace J. Morey
Laurence F. Pulgram
Albert L. Sieber
Liwen Arius Mah
Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, CA 94104

Attorneys for Plaintiff

C. William Craycroft
Law Offices of C. William Craycroft
1740 Technology Drive, Suite 200
San Jose, CA 94110-1355

Attorneys for Plaintiff

Denniss Michael Faigal
Patrick Eugene Premo
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

Attorneys for Plaintiff

Jessica L. Grant
Jayesh Sanatkumar Hines-Shah
Jonathan Alan Patchen

1 Taylor & Company Law Offices, LLP
2 One Ferry Building
3 Suite 355
4 San Francisco, CA 94111

5 I am aware that on motion of the party served, service is presumed invalid if postal
6 cancellation date or postage meter date is more than one day after the date of deposit for mailing an
7 affidavit.

8 I declare that I am employed in the office of a member of the Bar of this Court at whose
9 direction the service was made and that this declaration was executed on June 24, 2008, at Palo
10 Alto, California. I declare under penalty of perjury under the laws of the State of California, and the
11 United States of America, that the foregoing is true and correct.

12 Executed on June 24, 2008



13 Alice P. Kava

14
15 4326135v.1
16
17
18
19
20
21
22
23
24
25
26
27
28